

STATE OF MICHIGAN
COURT OF APPEALS

UNITED CONGREGATIONAL CHRISTIAN
CHURCH OF DETROIT,

UNPUBLISHED
December 28, 2001

Plaintiff-Appellee,

v

MICHIGAN BASIC PROPERTY INSURANCE
ASSOCIATION,

No. 224491
Wayne Circuit Court
LC No. 98-812371-CK

Defendant-Appellant.

Before: Murphy, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Plaintiff, United Congregational Christian Church of Detroit (the church), commenced this action after defendant, Michigan Basic Property Insurance Association (Michigan Basic), refused to pay the church's insurance claim on the basis that a fire loss was not covered under the church's insurance policy because the church's property was intentionally destroyed through arson committed by the church minister. The church's theory was that there was no arson, and that Michigan Basic, through its investigators, fabricated the arson claim in order to avoid liability under the policy. The case was tried before a jury, which determined that the fire loss was not the result of an arson fire, that the church did not intend to defraud Michigan Basic, and that Michigan Basic violated the Michigan Consumer Protection Act. Defendant now appeals as of right. We affirm in part and reverse in part.

First, Michigan Basic argues that it was denied a fair trial because the trial court allowed the church to argue as part of its case that Michigan Basic's trial attorney fabricated evidence and encouraged witnesses to lie. We disagree. When reviewing an appeal asserting improper conduct of an attorney, this Court first determines whether or not the claimed error was in fact error and, if so, whether it was harmless. *Reetz v Kinsman Marine Transit Co*, 416 Mich 97, 102-103; 330 NW2d 638 (1982). If the claimed error was not harmless, this Court must then ask if the error was properly preserved by an objection and request for an instruction or motion for mistrial. *Id.* at 103. The alleged error in this case was so preserved.

Here, it was part of the church's theory, which the church continues to assert on appeal, that the evidence indicated that Michigan Basic's trial attorney persuaded the private fire investigator to fabricate an arson theory. The record shows that the fire investigator changed his initial evaluation of the fire from "undetermined" to "arson" shortly after talking to Michigan

Basic's attorney. The fire investigator gave several reasons for the change in his reports; however, the church presented evidence, including the fire investigator's own testimony on cross-examination, which could reasonably lead a juror to question the reasons for, and legitimacy of, the change.

During closing argument, counsel is permitted to draw reasonable inferences from the testimony. *In re Miller*, 182 Mich App 70, 77; 451 NW2d 576 (1990). Attorneys are afforded wide latitude during arguments. *Dunn v Lederle Laboratories*, 121 Mich App 73, 90; 328 NW2d 576 (1982). Here, we believe that the church's counsel permissibly drew a reasonable inference from the testimony and documentary evidence, and presented that inference to the jury. Moreover, the jury was instructed that the statements and arguments made by the attorneys were not evidence.¹

Michigan Basic also argues that the trial court abused its discretion by limiting examination of witnesses to one hour. We disagree. The trial court is required to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." MRE 611(a). The mode and order of interrogation of witnesses is within the trial court's discretion. *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 415; 516 NW2d 502 (1994). The scope of the trial court's discretion includes time limits on examination. See *Hartland Twp v Kucykowicz*, 189 Mich App 591, 596; 474 NW2d 306 (1991).

Here, Michigan Basic did not make an offer of proof regarding the substance of the information it wanted to explore during examination of the church minister, MRE 103(a)(2), nor did Michigan Basic request more time to examine the minister. Regardless, a review of the record indicates that defense counsel was able to address all of the relevant matters concerning the church minister. Additionally, Michigan Basic was able, through the testimony of other defense witnesses, to raise questions regarding the minister's finances and actions. Further, Michigan Basic introduced documentary evidence concerning the church minister, including

¹ In *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 150; 624 NW2d 197 (2000), this Court noted that "[i]n a society where there seem to be no limits to the lengths to which lawyers will go to secure a 'win' for their clients, it is easy to ignore that civility, honor, and a trustworthy character are indispensable qualities in lawyers." Although we decide today not to take the exceptional step to reverse the jury's verdict under the facts of this case, the specific comments by plaintiff's counsel at trial regarding defense counsel were not necessarily required to effectively present the church's position. In light of the evidence, plaintiff's counsel could have simply and persuasively argued that Michigan Basic, and its agents, pressured its fire investigator to make a favorable finding, and that based on the pressure, the arson conclusion was not credible. There was no direct evidence that defense counsel orchestrated a deliberate fabrication, nor should defense counsel consider our decision as supporting plaintiff's claim of fabrication. Although we are not in a position to dictate trial strategy to counsel, nor do we wish to have that authority, we do believe that it is extremely important that counsel seriously examine any situation where a claim of fabrication, or any other unethical behavior, is made to a jury regarding opposing counsel, keeping in mind civility and the honor of practicing law.

bank statements, credit card statements, and the examination under oath, which were admitted and considered by the jury. We decline to find an abuse of discretion.

Michigan Basic also raises two issues regarding the church's claim under the Michigan Consumer Protection Act [MCPA], MCL 445.901 *et seq.* As Michigan Basic concedes on appeal, it did not preserve its claim that the MCPA is not applicable because it did not raise this issue in the trial court. However, this Court may review issues that were not decided by the trial court where, as here, the issue is one of law and all the necessary facts were presented. *Koster v June's Trucking, Inc.*, 244 Mich App 162, 168; 625 NW2d 82 (2000).

The MCPA is a remedial statute designed to prevent unfair practices in trade or commerce. *Forton v Laszar*, 239 Mich App 711, 715; 609 NW2d 850 (2000). The MCPA prohibits "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce" MCL 445.903(1). Unfair, unconscionable, and deceptive methods, acts, or practices are defined by a series of statutory provisions. MCL 445.903. "Trade or commerce" is defined as "the conduct of a business providing goods, property, or service primarily for personal, family, or household purposes." MCL 445.902(d). This Court has stated that "[w]e are satisfied that a clear legislative intent in enacting the [MCPA] was to protect consumers in their purchases of goods which are primarily used for personal, family or household purposes." *Noggles v Battle Creek Wrecking, Inc.*, 153 Mich App 363, 367; 395 NW2d 322 (1986).

Here, the church is not a consumer which purchased insurance for personal, family, or household purposes, and its commercial insurance policy does not fall within the definition of trade or commerce under the MCPA. Compare *The Society of St. Vincent de Paul in the Archdiocese of Detroit v Mt. Hawley Ins Co*, 49 F Supp 2d 1011, 1020 (ED Mich, 1999). Thus, the MCPA was not applicable to this case, and the jury should not have been directed to consider Michigan Basic's liability on this basis. The portion of the judgment granting the church attorney fees pursuant to the violation of the MCPA is vacated. However, we do remand to allow the church to make a request, within 28 days of the issuance of this opinion, for any costs or attorney fees it may be entitled to under the case evaluation rule, MCR 2.403.

In light of our resolution of the foregoing issues, we need not address Michigan Basic's remaining issue on appeal.

Affirmed in part and reversed in part and remanded. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Janet T. Neff
/s/ Joel P. Hoekstra